

# Homeless Bill of Rights: How Legislators Get to Feel Pro-Homeless Without Effort or Money

COMMENT

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*In 2013, Illinois became the second state in the nation to enact a homeless bill of rights to protect homeless persons from discrimination in the right to use and move freely in public spaces in the same manner as any other person, the right to equal treatment by State and municipal agencies, the right not to register to vote and to vote, the right to have personal information protected, and the right to have a reasonable expectation of privacy in his or her personal property. Though legislation to protect the rights of homeless people is necessary, the Illinois Homeless Bill of Rights does not do what is needed to combat homelessness. After some background information about the history of homelessness in America and the similarities and differences between the three homeless bills of rights that have been enacted, this Comment argues that the Illinois Homeless Bill of Rights does not provide any new protection for people struggling with homelessness, but, through its limiting language, instead gives the homeless population rights that they have already possessed. This Comment also advocates alternative measures to prevent homelessness and stop the criminalization of the homeless by looking at methods implemented in other places around the country.*

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## I. INTRODUCTION

“In January 2014, there were 578,424 people experiencing homelessness on any given night in the United States.”<sup>1</sup> Of that number, 216,197 were people in families.<sup>2</sup> In Illinois, in 2012, there were 14,144 homeless,<sup>3</sup>

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1. NAT’L ALLIANCE TO END HOMELESSNESS, *Snapshot of Homelessness*, [http://www.endhomelessness.org/pages/snapshot\\_of\\_homelessness](http://www.endhomelessness.org/pages/snapshot_of_homelessness) (last visited Feb. 18, 2015) (emphasis omitted).

2. *Id.*

3. Tina Sfondeles, *Homeless Survey Aims to Focus Aid Where it’s Needed*, *Chicago Sun Times*, CHI. SUN TIMES (Jan. 26, 2013), <http://www.suntimes.com/news/metro/17782024-418/homeless-survey-aims-to-focus-aid-where-its-needed.html>.

up from the 2011 statistics in which there were 14,009.<sup>4</sup> Chicago was ranked number ten on a list of cities with the largest numbers of homeless people, with 6,710.<sup>5</sup>

Picture a homeless person in your head. What do you see? Our picture of the homeless tends to be of an old, bearded, white derelict leaning up against a building drinking a bottle of booze out of a paper bag, much like Steve Buscemi's character from *Big Daddy*.<sup>6</sup> However, this stereotype does not hold true. Today, the homeless include the elderly, mentally disabled, minorities, young, single men and women with minimal education and few job skills, and more and more families with children.<sup>7</sup> Homeless families make up about a third of the total homeless population.<sup>8</sup> One in forty-five children experience homelessness in America each year.<sup>9</sup>

Another stereotype about homeless people is that they are only homeless because they are too lazy to work.<sup>10</sup> Again, this is a stereotype that does not ring true.<sup>11</sup> Homelessness is caused by a combination of lack of affordable housing, extreme poverty, decreasing government support, decrease in the amount of jobs available, domestic violence, and fractured social supports among other things.<sup>12</sup> Making it easier for a homeless person to get a job is not enough to fix the problem.<sup>13</sup>

Though most of us worry about where homeless people are going to sleep at night, whether they have enough food, and how they are going to get medical attention, legislators in Rhode Island, Illinois, Connecticut, and other states are more worried about how to appear pro-homeless without

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4. THE NAT'L ALLIANCE TO END HOMELESSNESS, THE STATE OF HOMELESSNESS IN AMERICA 20 (2012), available at <http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z-pdf-archive/homeless.pdf>.

5. THE U.S. DEP'T OF HOUS. AND URBAN DEV., THE 2012 POINT-IN-TIME ESTIMATES OF HOMELESSNESS 7 (2012).

6. BIG DADDY (Columbia Pictures 1999).

7. NAT'L COAL. FOR THE HOMELESS, WHO IS HOMELESS? (2007), available at <http://www.nationalhomeless.org/publications/facts/Whois.pdf>.

8. THE NAT'L CTR. ON FAMILY HOMELESSNESS, THE CHARACTERISTICS AND NEEDS OF FAMILIES EXPERIENCING HOMELESSNESS, available at <http://www.familyhomelessness.org/media/306.pdf> [hereinafter THE NAT'L CTR. ON FAMILY HOMELESSNESS, THE CHARACTERISTICS AND NEEDS].

9. THE NAT'L CTR. ON FAMILY HOMELESSNESS, *Children*, <http://www.familyhomelessness.org/children.php?p=ts> (last visited Oct. 10, 2013).

10. See HOUS. AND URBAN DEV. EMP'T LECTURE SERIES-LECTURE #6 PAMPHLET, HOMELESSNESS AND HIRING: EMP'R PERSPECTIVES 8, available at [https://www.onecpd.info/resources/documents/AudioLecture6\\_Pamphlet.pdf](https://www.onecpd.info/resources/documents/AudioLecture6_Pamphlet.pdf).

11. See *id.*

12. THE NAT'L CTR. ON FAMILY HOMELESSNESS, THE CHARACTERISTICS AND NEEDS, *supra* note 8.

13. See *id.*

spending any money.<sup>14</sup> The answer they have come up with is the Homeless Bill of Rights.<sup>15</sup> These statutes essentially limit the ability of employers, landlords, and others to discriminate based on homelessness.<sup>16</sup>

This Comment argues that the Homeless Bill of Rights does not do what is needed to battle homelessness. Part II considers some background information including the history of homelessness in America, especially past legislation, ordinances, and court cases, and examines the similarities and differences of the Illinois, Rhode Island, and Connecticut statutes. Part III discusses why legislators believed that a Homeless Bill of Rights was necessary. Answering this question requires an examination of the Equal Protection Clause, which typically governs discrimination, and explains that the Clause does not encompass homelessness. Part IV takes a closer look at a few provisions of the Illinois Homeless Bill of Rights, namely those protecting the rights to move freely and use public places, not to face discrimination in employment, and to vote. This section will consider the laws that are already in place for these rights and whether the Homeless Bill of Rights provisions provide any new protection. Part V looks at alternative measures that Illinois could take, by looking at what other places around the country have been doing to prevent homelessness and stop the criminalization of the homeless.

## II. BACKGROUND

### A. CRIMINALIZATION OF HOMELESSNESS

Franklin was a fifty-three-year-old man who served in the armed forces, and wanted to work.<sup>17</sup> Every morning he put in applications to work at local businesses, one of which actually told him not to bother.<sup>18</sup> He lived in the woods and after spending the mornings looking for work, he spent the afternoons asking for change, which is what he said he would continue to do until he gets put in jail.<sup>19</sup> Franklin has had a total of four citations from a Florida statute that makes it illegal to ask for money from cars on an exit

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14. See R.I. GEN. LAWS §§ 34-37.1-1 - 37.1-5 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 - 45/99. (West 2013).

15. R.I. GEN. LAWS §§ 34-37.1-1 - 37.1-5 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 - 45/99. (West 2013).

16. R.I. GEN. LAWS §§ 34-37.1-1 - 37.1-5 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 - 45/99. (West 2013); see *infra* Parts II.B, III.

17. Scott Keyes, *The Problem with Criminalizing Homelessness*, THINK PROGRESS (Sept. 19, 2013), <http://thinkprogress.org/justice/2013/09/19/2629581/criminalizing-homelessness/>.

18. *Id.*

19. *Id.*

ramp.<sup>20</sup> Franklin has paid each of his tickets, but said he had to continue to violate the statute or he would not survive, which is made even harder by having to pay a ticket.<sup>21</sup> Florida is not the only place with laws that virtually make it a crime to be homeless.<sup>22</sup> More and more cities are enacting laws making it illegal to sleep in public or ask for change.<sup>23</sup> The National Coalition for the Homeless and the National Law Center on Homelessness & Poverty have compiled a list of the twenty “meanest” cities based on

[T]he number of anti-homeless laws in the city, the enforcement of those laws and severities or penalties, the general political climate toward homeless people in the city, local advocate support for the meanest designation, the city’s history of criminalization measures, and the existence of pending or recently enacted criminalization legislation in the city.<sup>24</sup>

Chicago, Illinois, is number twelve on the list.<sup>25</sup> Many of the other “meanest” cities and the other cities with anti-homeless ordinances will be considered below.<sup>26</sup>

No matter how inclusive or restrictive the ordinances are, the reality is that they make it a crime to be homeless.<sup>27</sup> Just like Franklin, many people have to violate the statutes in order to have any chance of survival.<sup>28</sup> Fining people who are homeless does not really change anything because people will either have to choose not to pay the fine because they cannot afford it

20. *Id.*; see FLA. STAT. § 316.130(18) (2008).

21. Keyes, *supra* note 17.

22. *Id.*

23. *Id.*

24. THE NAT’L COAL. FOR THE HOMELESS AND THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, A DREAM DENIED: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 24 (2006), available at <http://www.nationalhomeless.org/crimreport/report.pdf> [hereinafter THE NAT’L COAL. FOR THE HOMELESS AND THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY].

25. *Id.* The list of the meanest cities is as follows: (1) Sarasota, Florida, (2) Lawrence, Kansas, (3) Little Rock, Arkansas, (4) Atlanta, Georgia, (5) Las Vegas, Nevada, (6) Dallas, Texas, (7) Houston, Texas, (8) San Juan, Puerto Rico, (9) Santa Monica, California, (10) Flagstaff, Arizona, (11) San Francisco, California, (12) Chicago, Illinois, (13) San Antonio, Texas, (14) New York City, New York, (15) Austin, Texas, (16) Anchorage, Alaska, (17) Phoenix, Arizona, (18) Los Angeles, California, (19) St. Louis, Missouri, and (20) Pittsburgh, Pennsylvania.

26. *Id.*

27. See, e.g., CHICAGO, ILL., CODE § 8-4-025 (1990); MEMPHIS, TENN. CODE § 6-56 (2010).

28. See Keyes, *supra* note 17.

or pay the fine with money earmarked for necessities, thus continuing the cycle of homelessness.<sup>29</sup>

### 1. *Anti-begging Ordinances*

Anti-begging ordinances are one type of ordinance that criminalizes the homeless. The free speech provisions of the U.S. Constitution dictate that only aggressive panhandling is illegal.<sup>30</sup> Aggressive panhandling is the act of using force or the threat of force to ask for money.<sup>31</sup> Nonaggressive requests for money remain protected as free speech.<sup>32</sup> However, the distinction between aggressive and nonaggressive panhandling is often blurred by subjective perceptions of aggression to the point that many people support laws that would make all panhandling illegal.<sup>33</sup> Many community groups have alternative plans for panhandling, such as giving the homeless things like vouchers for food, referral cards for services, or telling community members to “just say no” to giving money to the homeless.<sup>34</sup> However, these plans will not solve the problem of homelessness, but just push homeless people from one community to another.<sup>35</sup> Homeless advocates emphasize that people have a legal right to ask for money.<sup>36</sup> There is no difference between a homeless person asking for change and a Girl Scout asking for donations or a non-profit making phone calls asking for support of a cause.<sup>37</sup>

Many cities are using anti-begging ordinances to authorize excessive police action against the homeless.<sup>38</sup> One such city is Chicago, Illinois.<sup>39</sup> In 2004 the Chicago City Council passed the “Aggressive Panhandling” ordinance.<sup>40</sup> It was amended in 2009 to include additional provisions, but it generally prohibits panhandlers from asking for money within ten feet of a bus stop, ATM, or bank entrance; in any public transportation vehicle or facility; in a sidewalk café; while people are standing in line to enter an establishment; and when two or more people panhandle together, among

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29. *See id.*

30. MADELEINE R. STONER, *THE CIVIL RIGHTS OF HOMELESS PEOPLE: LAW, SOCIAL POLICY, AND SOCIAL WORK PRACTICE* 137 (Walter De Gruyter Inc. 1995).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. STONER, *supra* note 30, at 138.

36. *Id.*

37. *Id.*

38. *See, e.g.*, CHICAGO, ILL., CODE § 8-4-025 (1990).

39. *Id.*

40. *See* THE NAT’L COAL. FOR THE HOMELESS AND THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 24, at 36.

other things.<sup>41</sup> A violation of this provision is subject to a fifty dollar fine for a first or second offense, and a fine of one hundred dollars for a third or subsequent offense.<sup>42</sup> This ordinance was a response to a 2002 ordinance banning all panhandling, which was challenged in a class-action lawsuit and resulted in a settlement for the plaintiffs, as well as a repeal of the law.<sup>43</sup> Ordinances such as this are common ways for cities to deal with panhandlers in a way that is not as restrictive as prior laws.<sup>44</sup>

Even when panhandling is not illegal, police officers will tell homeless people that it is illegal and threaten to arrest them.<sup>45</sup> In 2012 a group of panhandlers filed a class-action lawsuit seeking an injunction against Chicago police officers that habitually removed them from Michigan Avenue, even though it is legal to ask for money there.<sup>46</sup> Their attorney said that the police were segmenting the streets of Chicago; the police would tell poor people that they could not be on certain parts of Michigan Avenue where rich people could be.<sup>47</sup> The police do not usually arrest the beggars on Michigan Avenue, but just force them to go elsewhere.<sup>48</sup> The panhandlers' attorney suspected that was because any arrests would be illegal.<sup>49</sup>

As stated previously, the United States Supreme Court has held that the First Amendment protects charitable solicitations.<sup>50</sup> There has been a diverse reaction of courts to the anti-begging ordinances that cities have

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41. CHICAGO, ILL., CODE § 8-4-025 (1990).

42. *Id.*

43. THE NAT'L COAL. FOR THE HOMELESS AND THE NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 24, at 36.

44. See MEMPHIS, TENN. CODE § 6-56 (2010). Memphis adopted a law almost exactly the same as that in Chicago after previously having an ordinance that required all panhandlers to get a permit to beg in public places; Lynda Natali, *Memphis Turns Up Heat on Its Downtown Panhandlers*, L.A. TIMES, Feb. 16, 1994, [http://articles.latimes.com/1994-02-16/news/mn-23584\\_1\\_downtown-memphis](http://articles.latimes.com/1994-02-16/news/mn-23584_1_downtown-memphis).

45. See *Panhandlers Sue Chicago, Alleging Police Ban Them from Michigan Avenue*, HUFFINGTON POST, May 24, 2012, [http://www.huffingtonpost.com/2012/05/24/panhandlers-sue-chicago-a\\_n\\_1542925.html](http://www.huffingtonpost.com/2012/05/24/panhandlers-sue-chicago-a_n_1542925.html).

46. *Id.*

47. See *Panhandlers Sue City for Being Kicked Off Magnificent Mile*, CBS CHICAGO, May 23, 2012, [http://www.huffingtonpost.com/2012/05/24/panhandlers-sue-chicago-a\\_n\\_1542925.html](http://www.huffingtonpost.com/2012/05/24/panhandlers-sue-chicago-a_n_1542925.html).

48. *Id.*

49. *Id.*

50. See *Schaumburg v. Citizens for a Better Env't.*, 444 U.S. 620 (1980) (holding that an ordinance prohibiting solicitation of contributions by a charitable organization not using at least seventy-five percent of their receipts for "charitable purposes" was unconstitutionally overbroad in violation of the First and Fourteenth Amendments as charitable appeals for funds involve a variety of speech interests of which the ordinance would have a chilling effect).

enacted.<sup>51</sup> The poor or homeless persons challenging these statutes have alleged that these laws violated their rights to free speech under the state and federal constitutions.<sup>52</sup> Some courts have rejected this argument and held that the statute at issue was valid, finding that begging did not constitute protected speech.<sup>53</sup> For example, in *Ulmar v. Municipal Court for Oakland-Piedmont*, the California First District Court of Appeals said that “[b]egging and soliciting for alms do not necessarily involve the communications of information or opinion; therefore, approaching individuals for that purpose is not protected by the First Amendment.”<sup>54</sup> Others found these laws invalid as violating the beggars’ free speech rights.<sup>55</sup> In *Blair v. Sha-*

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51. See, e.g., *Young v. N.Y.C. Transit Auth.*, 903 F.2d 146 (2d Cir. 1990) (holding that a transit authority regulation prohibiting begging and panhandling in a subway system did not violate the First Amendment rights of the homeless); *Seattle v. Webster*, 802 P.2d 1333 (holding that an ordinance that prevented pedestrian interference and aggressive begging was not unconstitutional); *People v. Fogelson*, 577 P.2d 677 (Cal. 1978) (holding that an ordinance requiring a permit to solicit contributions on public property was unconstitutional as an impermissible restriction on free speech).

52. See, e.g., *Roulette v. City of Seattle*, 97 F.3d 300 (9th Cir. 1994) (affirming the lower court’s rejection of First and Fourteenth Amendment challenges to an ordinance that prohibited sitting or lying on sidewalks in commercial areas between 7:00 a.m. and 9:00 p.m.); *Smith v. City of Fort Lauderdale, Fla.*, 177 F.3d 954 (11th Cir. 1999) (ruling that a regulation proscribing begging on a strip of beach and two sidewalks did not violate free speech); *People v. Zimmerman*, 19 Cal Rptr. 2d 486 (Cal. App. Dep’t Super. Ct. 1993) (dismissing plaintiff’s complaint that begging did not constitute a crime in the State of California).

53. See, e.g., *McFarlin v. District of Columbia*, 681 A.2d 440 (D.C. App. 1996) (determining that an act prohibiting persons from asking, begging, or soliciting alms at a subway station did not violate the First Amendment); *People v. Stroman*, 909 N.Y.S.2d 336 (City Crim. Ct. 2010) (holding that a statute prohibiting begging in a public place was constitutional); *People v. Barton*, 861 N.E.2d 75 (N.Y. App. Ct. 2006) (deciding that a city ordinance that prohibited panhandling was content neutral and narrowly tailored); *People v. Schrader*, 617 N.Y.S.2d 429 (City Crim. Ct. 1994) (observing that begging was a form of protected speech under State and Federal Constitutions, but the transit system was nonpublic forum and a ban on begging by people in the subway was a reasonable limitation on speech in nonpublic forum).

54. *Ulmer v. Mun. Court for Oakland-Piedmont Judicial Dist.*, 127 Cal. Rptr. 445, 447 (Ct. App. 1976).

55. See, e.g., *Loper v. N.Y.C. Police Dept.*, 999 F.2d 699 (2d Cir. 1993) (determining that a New York statute that prohibited loitering in public places for purposes of begging violated the First Amendment); *C.C.B. v. Florida*, 458 So. 2d 47 (Fla. App. 1st Dist. 1984) (holding that a city was not entitled to absolutely prohibit a beggar’s exercise of his freedom of speech); *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013) (concluding that a Michigan statute which criminalized begging in public places was facially invalid); *Perry v. Los Angeles Police Dept.* 121 F.3d 1365 (9th Cir. 1997) (establishing that statute prohibiting sales and solicitation of donations along the boardwalk was not narrowly tailored to serve government interests of protecting local merchants and aiding in free traffic flow); *Arizona v. Boehler*, 262 P.3d 637 (Ariz. Ct. App. Div. 1 2001) (holding an ordinance banning panhandlers and other solicitors from orally asking pedestrians for cash after dark violated the First Amendment); *Ledford v. Florida*, 652 So. 2d 1254 (Fla. Dist. Ct. App. 2d Dist. 1995) (observing

*nahan*, the United States District Court for the Northern District of California held that the state's interest in avoiding annoyance was not sufficiently compelling to justify a restraint on the exercise of the right to free speech.<sup>56</sup> The court further said that there can be no distinction between the right of a homeless person to solicit money and that of a charity.<sup>57</sup> Challenges to these laws on the grounds of being unconstitutionally vague, have been unsuccessful because the courts found that the language of the statute was sufficient to put a reasonable person on notice as to what they were not allowed to do.<sup>58</sup> The laws have also been held to be valid against challenges that they constituted an unreasonable exercise of police power,<sup>59</sup> and that they conflicted with a state statute.<sup>60</sup>

## 2. Ordinances Against Loitering and Sleeping in Public

Ordinances against loitering and sleeping in public also have the effect of criminalizing the homeless. While there are many excellent programs and services for those who are homeless, the demand far exceeds the supply everywhere.<sup>61</sup> The shelter system falls so far short of need that people have no choice but to live on the streets and in parks.<sup>62</sup> Yet, the same system that forces people to live on the streets is now arresting or harassing them when they get there.<sup>63</sup> Most local governments are enacting laws targeting loitering in public places; others are adopting strategies to get the homeless out of public encampments and into alternative settings.<sup>64</sup> Some such ordinances include imposed curfews in parks and bans on loitering, sleeping, or

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that ordinance prohibiting begging for money while on any public way infringed on free speech rights and was unconstitutional vague); *New York v. Hoffstead*, 905 N.Y.S.2d 736 (App. Term 2010) (holding a statute criminalizing loitering for purposes of begging violated freedom of speech guarantee).

56. *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991), *vacated on other grounds*, 919 F. Supp. 1361 (N.D. Cal. 1996).

57. *Id.*

58. *See, e.g., Arizona ex rel. Williams v. City Court of Tucson*, 520 P.2d 1166 (Ariz. 1974) (holding that the ordinance that proscribed the act of loitering combined with the purpose of begging put a reasonable person on notice as to what conduct was forbidden); *Ulmer v. Mun. Court for Oakland-Piedmont Judicial Dist.*, 55 Cal. App. 3d 263 (1st Dist. 1976) (determining that the meaning connoted by accost in the statute was clear from the legislative comments and is sufficient to give warning of the conduct proscribed).

59. *See, e.g., Alegata v. Massachusetts*, 231 N.E.2d 201 (Mass. 1967) (holding that a statute empowering police to examine persons abroad during nighttime whom they have reason to suspect of unlawful design was valid insofar as it permits a brief threshold inquiry in certain circumstances).

60. *See, e.g., Chad v. City of Ft. Lauderdale*, 66 F. Supp. 2d 1242 (N.D. Fla. 1998).

61. STONER, *supra* note 30, at 149.

62. *Id.*

63. *Id.*

64. *Id.* at 150.

camping in public.<sup>65</sup> Sarasota, Florida, winning the spot of the “meanest” city, has made many attempts to make it illegal to sleep out-of-doors.<sup>66</sup> The City Commission approved an ordinance prohibiting lodging outdoors in February 2005 after its previous no-camping rule was ruled unconstitutional for being too vague and punishing innocent conduct.<sup>67</sup> The February 2005 rule prohibited using any property for sleeping outside without permission from the property owner.<sup>68</sup> In order to mitigate the harsh affects, the law required that police officers offer people who violate the law a ride to the shelter instead of jail; however, this ride to the shelter was only to be offered once a year.<sup>69</sup> A few months after its enactment, this ordinance was also found unconstitutional because it gave police officers too much discretion in deciding who was a threat to public health and safety and who was just taking a nap on the bench.<sup>70</sup> Not ones to give up, the City passed another ordinance, very similar to the other two, which did hold up in court and is currently in force.<sup>71</sup> The new law makes it a crime to sleep without permission on city or private property, to create a tent or makeshift shelter for sleeping, or to lay down material for the purpose of sleeping.<sup>72</sup> The ordinance also includes a list of criteria to determine if a person violates the law.<sup>73</sup> One or more of the following five features must be observed in order to make an arrest:

- (1) Numerous items of personal belongings are present;
- (2) The person is engaged in cooking activities;
- (3) The person has built or is maintaining a fire;
- (4) The person has engaged in digging or earth breaking activities;
- (5) The person is asleep and when awakened states that he or she has no other place to live.<sup>74</sup>

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65. *Id.* at 152.

66. THE NAT’L COAL. FOR THE HOMELESS AND THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 24, at 25.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. SARASOTA, FLA., CODE § 34-41 (1986).

72. *Id.*

73. *Id.*

74. *Id.*

Many statutes forbidding loitering have been found to be constitutional.<sup>75</sup> However, legislation directed only at loitering was unconstitutionally vague where they failed to give standards by which a reasonable person could determine who was loitering, especially where the term was not defined or the circumstances under which the statute would apply were not sufficiently set out.<sup>76</sup> Such legislation was unconstitutionally overbroad where the law included conduct, which was constitutionally protected.<sup>77</sup> For example, in *Kolender v. Lawson*, the Supreme Court held that a loitering statute that required anyone who loitered or wandered on streets to provide “credible and reliable” identification and to account for their presence when requested by a police officer was unconstitutionally vague where “credible and reliable” identification was defined as “carrying reasonable assurance that the identification is authentic and providing means for later getting in touch with the person who has identified himself.”<sup>78</sup> Further, in *Pottinger v. City of Miami*, the United States District Court for the Southern District of Florida held that ordinances prohibiting sleeping in public, being in a public park after hours, and loitering were overbroad as applied to homeless people, where homeless people were arrested for harmless, inoffensive conduct such as sleeping and bathing that they were forced to do in public places.<sup>79</sup> Loitering statutes have also been found unconstitutional where they in-

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75. See, e.g., *California v. Superior Court (Caswell)*, 758 P.2d 1046 (Cal. 1988) (holding that a statute that made it a misdemeanor to loiter in or about any public toilet satisfied due process requirements); *New York v. Goodwin*, 519 N.Y.S.2d 189 (N.Y. 1st Dist. 1987) (determining that a loitering statute which prohibited remaining or sleeping in a transportation facility was constitutional as applied).

76. See, e.g., *Baker v. Bindner*, 274 F. Supp. 658 (W.D. Ky. 1967) (holding that a vagrancy statute was unconstitutional because it did not give fair notice and provided arbitrary standards susceptible to overreaching by officials); *Massachusetts v. Williams*, 479 N.E.2d 687 (Mass. 1985) (deciding that an ordinance that prohibited sauntering and loitering “in such a manner as to obstruct or endanger” travelers was void for vagueness); *New Jersey v. Caez*, 195 A.2d 496 (App. Div. 1963) (holding that loitering statute was unconstitutionally vague where it did not define the word “loiter” or give any standard by which it could be determined); *Derby v. Town of Hartford*, 599 F. Supp. 130 (D. Vt. 1984) (determining that a town’s loitering ordinance was unconstitutionally vague where it possessed uncertain time elements which failed to give any indication as to how long one could remain idle in one location).

77. See, e.g., *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965); *Ames v. City of Hermosa Beach*, 16 Cal. App. 3d 146 (Cal. 2d Dist. Ct. App. 1971); *Territory of Haw. v. Anduha*, 48 F.2d 171 (9th Cir. 1931); *Hayes v. Mun. Court of Oklahoma City*, 487 P.2d 974 (Okla. Crim. App. 1971); *Howard v. Texas*, 617 S.W.2d 191 (Tex. Crim. App. 1979).

78. *Kolender v. Lawson*, 461 U.S. 352, 352 (1983).

79. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1577 (S.D. Fla. 1992), *remanded for limited purposes*, 40 F.3d 1155 (11th Cir. 1994), *and directed to undertake settlement discussions*, 76 F.3d 1154 (1996).

fringed on First Amendment rights, or the right against self-incrimination.<sup>80</sup> Some courts invalidated loitering statutes on finding that they exceeded the government's police power.<sup>81</sup>

### 3. *Homeless Arrest Campaigns*

The backlash against the homeless is cruelest during homeless arrest campaigns and homeless sweeps.<sup>82</sup> Homeless sweeps occur when the police raid areas inhabited by homeless people and force them to leave.<sup>83</sup> The police often seize and destroy private property during these raids.<sup>84</sup> Homeless people may even be arrested for scavenging trash.<sup>85</sup>

The image of homeless sweeps is reminiscent of holocaust roundups in Nazi Germany.<sup>86</sup> Probably the most shocking police sweep happened in 1990 in Santa Ana, California, where sixty-four homeless men were arrested.<sup>87</sup> When the men were handcuffed, their arms were marked with identification numbers.<sup>88</sup> They were then taken to the police station and chained to a bench for more than six hours.<sup>89</sup> After six hours, they were all handed a ticket for one of four infractions: jaywalking, urinating in public, public drunkenness, or littering.<sup>90</sup> A Santa Ana police spokeswoman said that they believe that some homeless might be responsible for an increase in crime reported in the months prior.<sup>91</sup> A homeless sweep is a long way to go to prevent what *might* be responsible for an increase in crime.

Although this may be easily written off as something that happened in one U.S. city many years ago, it has actually been happening recently as

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80. *City of Hermosa Beach*, 16 Cal. App. 3d 146; *Ciccarelli v. City of Key West*, 321 So. 2d 472 (Fla. Dist. Ct. App. 3d Dist. 1975); *New York v. Hoffstead*, 905 N.Y.S.2d 736 (App. Term 2010).

81. *Soles v. City of Vidalia*, 90 S.E.2d 249 (Ga. Ct. App. 1955); *Anduha*, 48 F.2d 171; *City of Seattle v. Pullman*, 514 P.2d 1059 (Wash. 1973).

82. STONER, *supra* note 30, at 161.

83. *Id.*

84. *Id.*

85. Mike Reicher, *Taking a Stance Against Scavengers*, DAILY PILOT, Jan. 26, 2011.

86. STONER, *supra* note 30, at 161.

87. James M. Gomez, *64 Homeless Men Seized in Santa Ana Police Sweep: Crime: Officers Write Numbers on Arms of Those Arrested. A Civil Rights Proponent Says the Action Smacks of Nazism*, L.A. TIMES, Aug. 17, 1990, [http://articles.latimes.com/1990-08-17/local/me-825\\_1\\_santa-ana-police](http://articles.latimes.com/1990-08-17/local/me-825_1_santa-ana-police).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

well.<sup>92</sup> Police recently targeted around thirty homeless campsites in the woods in Portland, Oregon.<sup>93</sup> Fifty to seventy-five people were removed from the woods, and their belongings were thrown into a forty-yard dumpster.<sup>94</sup> A spokesman from the sheriff's office said the sweep was "to improve the quality of the environment and restore the area and make it a better place for the community to come and enjoy."<sup>95</sup>

Many legal challenges to anti-homeless ordinances cited previously have implicitly challenged homeless arrests.<sup>96</sup> Homeless arrest campaigns may violate many constitutional rights that people take for granted.<sup>97</sup> One of the rights that these campaigns may violate is that of travel and freedom of movement.<sup>98</sup> The Supreme Court in *Kolender v. Lawson* stated that an arrest for vagrancy without identification incriminated the constitutional rights of freedom of movement.<sup>99</sup> The opposite of the freedom to travel is the freedom to stay in one place without being expelled.<sup>100</sup>

Homeless sweeps that include the seizure of property may violate several constitutional provisions, as there are three limitations on the government's right to seize and destroy property.<sup>101</sup> First, the seizure must be reasonable.<sup>102</sup> Second, the Fifth Amendment prohibits taking private property for public use without just compensation.<sup>103</sup> Third, official seizure or destruction of personal property without notice may violate due process.<sup>104</sup>

In *Pottinger v. City of Miami*, the United States District Court for the Southern District of Florida recognized that the homeless have an interest in maintaining the few possessions that they have and that this interest may outweigh that of the city in preserving its aesthetic appeal.<sup>105</sup>

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92. See Cari Hachmann, *Sheriff Sweeps Homeless from Thousand Acres*, PORTLAND TRIBUNE, Oct. 28, 2013, <http://portlandtribune.com/go/42-news/199046-sheriff-sweeps-homeless-from-thousand-acres>.

93. *Id.*

94. *Id.*

95. *Id.*

96. See, e.g., *Kolender v. Lawson*, 461 U.S. 352 (1983); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1578 (S.D. Fla. 1992), *remanded for limited purposes*, 40 F.3d 1155 (11th Cir. 1994), *and directed to undertake settlement discussions*, 76 F.3d 1154 (1996).

97. STONER, *supra* note 30, at 167.

98. *Id.*

99. *Kolender*, 461 U.S. 352.

100. *See id.*

101. See U.S. CONST. amend. IV; U.S. CONST. amend. V.

102. U.S. CONST. amend. IV.

103. U.S. CONST. amend. V.

104. *Id.*

105. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1578 (S.D. Fla. 1992), *remanded for limited purposes*, 40 F.3d 1155 (11th Cir. 1994), *and directed to undertake settlement discussions*, 76 F.3d 1154 (1996).

Those worried or shocked by the previous story of the men in Santa Ana will be happy to know that some of those homeless men received some redress.<sup>106</sup> Seventeen of the homeless men seized by the police and chained up in the police station challenged the police of Santa Ana alleging that the city violated Equal Protection and Due Process rights of the homeless.<sup>107</sup> The plaintiffs contended that they were singled out for arrest and prolonged detention as part of the city's attempts to drive homeless people away from the city's civic center.<sup>108</sup> The parties reached a settlement agreement where the city said that they:

[W]ill refrain from discriminating against individuals on the basis of their homelessness and will refrain from using excessive force and pretrial punishment in conducting arrests and pretrial detentions. Specifically, the city agrees not to engage in a plan to drive homeless persons away from Santa Ana or to detain individuals solely on the basis of their homeless status. Moreover, the city agrees not to mark the bodies of persons charged with minor offenses with numbers or other identifying symbols, transport arrested or detained persons away from areas where they were arrested or detained, or are known to reside, or fail to make reasonable efforts to advise persons cited for violations that they must appear in court.<sup>109</sup>

Though this marked a victory for the homeless in one area of the country, many others face similar challenges everyday.<sup>110</sup>

#### B. THE HOMELESS BILL OF RIGHTS: RHODE ISLAND, ILLINOIS, AND CONNECTICUT

The Rhode Island, Illinois, and Connecticut versions of the Homeless Bill of Rights all encompass the same basic rights, but with different levels of protection for homeless people.<sup>111</sup> Each of them provide some version of the following rights: the right to use and move freely in public spaces in the

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106. See *Hinsley v. City of Santa Ana, Cal.*, No. 636360 (Cal. Super. Ct., Orange County, Oct. 19, 1990), available at 25 Clearinghouse Review 7, 920 (Nov. 1991).

107. *Id.*

108. *Id.*

109. *Id.*

110. See STONER, *supra* note 30, at 167.

111. R.I. GEN. LAWS §§ 34-37.1 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

same manner as any other person, the right to equal treatment by State and municipal agencies, the right not to face discrimination in employment, the right to emergency medical care, the right to register to vote and to vote, the right to have personal information protected, and the right to have a reasonable expectation of privacy in his or her personal property.<sup>112</sup>

Rhode Island was the first state to enact a homeless bill of rights,<sup>113</sup> and their statute is the most comprehensive.<sup>114</sup> The legislative intent of the act says, “[N]o person should suffer unnecessarily or be subject to unfair discrimination based on his or her homeless status. It is the intent of this chapter to ameliorate the adverse effects visited upon individuals and our communities when the state’s residents lack a home.”<sup>115</sup> Rhode Island’s statute is the only one of the three that amends another act, and the only one that includes a section to prohibit discrimination in retaining housing.<sup>116</sup>

The Illinois Act was the second one of these Acts to come into affect.<sup>117</sup> Illinois had the opportunity to make a statute that was the most comprehensive, and actually have some effect on homeless people, but instead drafted legislation that did none of those things.<sup>118</sup> House Bill 1878, was discarded in favor of Senate Bill 1210, which later became law, gave homeless people many different rights not included in the one that was passed, including: the right to live in any community which he or she could afford, the right to choose a type of living arrangement without harassment or interference, the right to employment and training opportunities that fit his or her interests, the right to manage his or her own finances, the right to not be coerced or penalized for not taking medication or not undergoing any medical treatment, the right of visitation, and the right to receive public services.<sup>119</sup> Not only did House Bill 1878 include so many other rights, it also gave the Department of Human Rights the ability to enforce the rights through the Illinois Human Rights Act, and amended the Illinois Human Rights Act to include “housing status” as a protected class for freedom from

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112. R.I. GEN. LAWS §§ 34-37.1 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

113. Meia Geddes, *R.I. Passes First Homeless Bill of Rights*, BROWN DAILY HERALD, Sept. 11, 2012, <http://www.browndailyherald.com/2012/09/11/ri-passes-first-homeless-bill-of-rights/>.

114. See R.I. GEN. LAWS §§ 34-37.1 (2012).

115. R.I. GEN. LAWS §§ 34-37.1-2(3) (2012).

116. See R.I. GEN. LAWS §§ 34-37.1 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

117. Elynn Fortino, *Illinois Enacts Landmark Homeless Bill of Rights*, PROGRESS ILL., Aug. 27, 2013, <http://www.progressillinois.com/quick-hits/content/2013/08/27/illinois-enacts-landmark-homeless-bill-rights>.

118. See H.R. 1878, 95th Gen. Assemb., 1st Sess. (Ill. 2007).

119. *Id.* at (a).

discrimination purposes.<sup>120</sup> Further, the House Bill gave the Department of Commerce and Economic Opportunity the ability to establish priorities of eligibility for temporary rental or other housing assistance to homeless people.<sup>121</sup> The House Bill would have done more to decrease the amount of homeless people that have to live on the streets than the bill that was adopted.<sup>122</sup>

Though the Illinois Homeless Bill of Rights is minimal at best, the Connecticut Homeless Bill of Rights accomplishes even less.<sup>123</sup> The Connecticut Act includes all of the rights the Rhode Island and Illinois statutes do, but in the most bare and broad way possible.<sup>124</sup> The language varies widely from that used in the Illinois and Rhode Island statutes.<sup>125</sup> It does not include examples, definitions, or language that would make it easy to understand what cases would actually fall under each of the rights listed.<sup>126</sup> The Act also does not include a civil action clause for injunctive and declaratory relief, damages, attorney's fees, or costs, which the Rhode Island and Illinois Acts do.<sup>127</sup> Connecticut also had the option to improve their Homeless Bill of Rights through an amendment, but chose not to.<sup>128</sup> The changes would have made the language of the Homeless Bill of Rights the same as that of Illinois, and included "housing status" as a protected class for purposes of Connecticut's Fair Housing Act.<sup>129</sup>

The biggest difference that sets the Rhode Island Act apart from the Illinois and Connecticut Acts is that it makes "housing status" a protected class for discrimination purposes under the Rhode Island Fair Housing Practices Act.<sup>130</sup> "Housing status" is defined as the status of having or not having a fixed or regular residence, including living on the streets, homeless shelter, or temporary residence.<sup>131</sup> Under the amendment to the Fair

120. *Id.* at (b), section 90.

121. *Id.* at section 15.

122. *See id.*

123. *See* CONN. GEN. STAT. ANN. § 1-500 (West 2015).

124. *Id.*

125. *See* R.I. GEN. LAWS §§ 34-37.1 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

126. *See id.*

127. *See id.*

128. *See* Written Testimony of Rev. Joshua Mason Pawelek, S.B. 896, Conn. 661st Gen. Assemb., Mar. 15, 2013, *available at* [http://www.ctstatelibrary.org/sites/default/files/2013\\_PA251\\_SB896.pdf](http://www.ctstatelibrary.org/sites/default/files/2013_PA251_SB896.pdf).

129. *See* Testimony of Nate Fox, S.B. 896, Conn. 661st Gen. Assemb., Mar. 15, 2013, *available at* [http://www.ctstatelibrary.org/sites/default/files/2013\\_PA251\\_SB896.pdf](http://www.ctstatelibrary.org/sites/default/files/2013_PA251_SB896.pdf).

130. R.I. GEN. LAWS §§ 34-37-1(b), 34-37-3(4) (2012), amended by S 2052.

131. R.I. GEN. LAWS § 34-37-3(16) (2012). "Housing status" is defined the same way under the Illinois Homeless Bill of Rights, however, it is just included as a definition in the Homeless Bill of Rights itself as the Illinois Act does not amend any other acts.

Housing Practices Act, people cannot be denied equal opportunity in obtaining housing accommodations because of discriminatory practices based on housing status.<sup>132</sup> The Illinois and Connecticut acts do not include housing status as a protected class; in fact the acts do not include any protection for homeless people against discriminatory practices in finding housing.<sup>133</sup>

Another major difference between the statutes is the rights given for dealing with employment discrimination.<sup>134</sup> Again, Rhode Island is the most inclusive, saying, “A person experiencing homelessness . . . [h]as the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider.”<sup>135</sup> The Illinois statute includes most of the same language, but does not include the right not to face discrimination while seeking employment, only while maintaining it.<sup>136</sup> This means that an employer can discriminate against a homeless person in the hiring process, but cannot do so when the homeless person already has the job.<sup>137</sup> This provision, in all reality, is no protection at all.<sup>138</sup> If an employer is going to discriminate against an individual, it is more likely to do so when hiring for a position, rather than against a current employee.<sup>139</sup> As it is likely that those who hire homeless people know that they are homeless upfront, if they are giving a job to a person that is homeless, they must not have a problem with having homeless people work for them.<sup>140</sup> The Connecticut statute is the least inclusive and most broad.<sup>141</sup> All the Connecticut statute says is “[e]ach homeless person in this state has the right to . . . [h]ave equal opportunities for employment . . . .”<sup>142</sup> The statute does not explain what “equal opportunities for employment” means, or how a homeless person would go about proving that they did not have equal opportunities for employment.<sup>143</sup> None of the three statutes makes “housing status” a protected class for purposes of employment.<sup>144</sup>

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132. R.I. GEN. LAWS § 34-37-1(a) (2012).

133. See CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

134. See R.I. GEN. LAWS § 34-37.1-3(3) (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

135. R.I. GEN. LAWS §§ 34-37.1-3(3) (2012).

136. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

137. See *id.*

138. See *id.*

139. See *id.*

140. See *id.*

141. See CONN. GEN. STAT. ANN. § 1-500(b)(2) (West 2015).

142. *Id.*

143. See CONN. GEN. STAT. ANN. § 1-500 (West 2015).

144. See R.I. GEN. LAWS §§ 34-37.1 (2012); CONN. GEN. STAT. ANN. § 1-500 (West 2015); 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

### III. THE NECESSITY OF LEGISLATION PROTECTING THE HOMELESS

Rhode Island, Illinois, and Connecticut were correct in their determination that the homeless need extra protection because discrimination against the homeless does not fall within any traditional federal protection. When it comes to matters dealing with discrimination by state or public actors, the Equal Protection Clause of the U.S. Constitution governs.<sup>145</sup> The Equal Protection Clause states, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>146</sup> The Equal Protection Clause applies to discrimination made by state and public actors and the denial of a fundamental right.<sup>147</sup> Equal Protection cases pose the question of whether the government can identify a sufficiently important objective for its discrimination.<sup>148</sup> The sufficiency of the justification depends on the type of discrimination.<sup>149</sup> There is a different level of analysis courts give based upon the discrimination that is being alleged.<sup>150</sup> The three levels of scrutiny are strict scrutiny, intermediate scrutiny, and rational basis.<sup>151</sup> Strict scrutiny is used for discrimination based on race or national origin; under this analysis the government must have a compelling reason for the discrimination and must not be able to achieve its objective without it.<sup>152</sup> Usually the challenged practice will not be upheld under strict scrutiny.<sup>153</sup> Intermediate scrutiny is used for classifications based on gender or against non-marital children,<sup>154</sup> and under it the government’s reason for the classification must be important.<sup>155</sup> Everything else falls under the rational basis test, which is the minimum level of scrutiny.<sup>156</sup> Under rational basis, the law created must only be a rational way to accomplish what the government was trying to achieve.<sup>157</sup>

Though there have so far only been very limited classifications added to strict or intermediate scrutiny, there are several criteria that have been considered in deciding what kind of analysis a certain classification will

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145. See U.S. CONST. amend. XIV, § 1.

146. *Id.*

147. ERWIN CHERMERINSKY, CONSTITUTIONAL LAW, 722-23 (3rd ed. 2009).

148. *Id.* at 718.

149. *Id.*

150. *Id.*

151. *Id.* at 719-20.

152. CHERMERINSKY, *supra* note 147 at 719.

153. *Id.*

154. *Id.*; see, e.g., *Clark v. Jeter*, 486 U.S. 456 (1988); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

155. CHERMERINSKY, *supra* note 147, at 719.

156. *Id.* at 720.

157. *Id.*

get.<sup>158</sup> First, the Supreme Court has looked at whether the characteristic is one that a person cannot change, such as race or gender.<sup>159</sup> Since the person did not choose to have a certain race or gender, they should not be penalized.<sup>160</sup> Second, the Court looks at whether the group has the ability to protect themselves through the political process.<sup>161</sup> For example, non-marital children do not have the ability to vote or represent themselves in government.<sup>162</sup> The Court also considers the group's history of discrimination.<sup>163</sup>

There has not been any Supreme Court case that has used Equal Protection analysis to determine whether or not homelessness would be considered a suspect class, or what analysis is likely to be used.<sup>164</sup> In fact, most appellate courts that have addressed the subject have concluded that homeless persons are not a suspect class and that sleeping is not a fundamental right.<sup>165</sup> However, at least one court has determined that homelessness could be considered a suspect class.<sup>166</sup> In *Pottinger v. Miami*, the United States District Court for the Southern District of Florida said:

This court is not entirely convinced that homelessness as a class has none of these “traditional indicia of suspectness.” It can be argued that the homeless are saddled with such disabilities, or have been

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158. *Id.*

159. *Id.*; *see, e.g.*, *Fullilove v. Klutznick*, 448 U.S. 448, 496 (1980).

160. CHEMERINSKY, *supra* note 147, at 720.

161. *Id.*

162. *See id.*

163. *Id.* The preceding two paragraphs provide a very limited and concise overview of Equal Protection analysis and cases. For a more thorough look at Equal Protection, *see* JAMES KUSHNER, *GOVERNMENT DISCRIMINATION: EQUAL PROTECTION LAW AND LITIGATION*, (2012-2013 ed.); Eugene Doherty, *Equal Protection Under the Fifth and Fourteenth Amendments: Patterns of Congruence, Divergence and Judicial Deference*, 16 OHIO N.U. L. REV. 591 (1989).

164. *See, e.g.*, *Joel v. City of Orlando*, 232 F.3d 1353, 1355 (11th Cir. 2000); *D’Aguanno v. Gallagher*, 50 F.3d 877, 879 n.2 (11th Cir. 1995) (holding that homelessness not a suspect class); *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1269 n.36 (3rd Cir. 1992).

165. *See Davison v. City of Tucson*, 924 F. Supp. 989, 993 (D. Ariz. 1996); *Johnson v. City of Dallas*, 860 F. Supp. 344, 355 (N.D. Tex. 1994), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995); *Joyce v. City and County of San Francisco*, 846 F. Supp. 843, 859 (N.D. Cal. 1994) (declining to be the first court to recognize fundamental right to sleep), *dismissed*, 87 F.3d 1320 (9th Cir. 1996); *Hawaii v. Sturch*, 921 P.2d 1170, 1176 (Haw. Ct. App. 1996) (noting that there is “no authority supporting a specific constitutional right to sleep in a public place” unless it is expressive conduct within the ambit of the First Amendment or is protected by other fundamental rights).

166. *See Pottinger v. City of Miami*, 810 F. Supp. 1551, 1578 (S.D. Fla. 1992) (indicating in dicta that homeless might constitute a suspect class), *remanded for limited purposes*, 40 F.3d 1155 (11th Cir. 1994), *and directed to undertake settlement discussions*, 76 F.3d 1154 (1996).

subjected to a history of unequal treatment or are so politically powerless that extraordinary protection of the homeless as a class is warranted.<sup>167</sup>

However, the court then stated that the issue of whether homelessness was a suspect class was beyond the scope of the evidence and unnecessary since it determined that the City infringed on the plaintiffs' fundamental right to travel.<sup>168</sup>

If the Supreme Court were to address whether homelessness was a suspect class, it would likely find that it was not, using the criteria that were established above.<sup>169</sup> It would first look at the fact that homelessness is not an immutable characteristic, like race or gender.<sup>170</sup> Homelessness is something that can change.<sup>171</sup> Second, they would look at whether homeless people have the ability to protect themselves through the political process.<sup>172</sup> Though it is true that homeless people do not have representation in Congress, they can vote and do have many organizations arguing on their behalf, so it is likely that the Supreme Court would find that they do have a voice in the political process.<sup>173</sup> Lastly, the Court would look at whether the class of people has had a history of discrimination.<sup>174</sup> There is no doubt that there has been a history of discrimination against the homeless, however, as this is the only factor that would be met, it is likely that the Supreme Court would not find a suspect class.<sup>175</sup> Also, though the Supreme Court has not decided whether homelessness would be a suspect class, they have held that poverty is not a suspect classification and that discrimination against the poor should only receive rational basis review.<sup>176</sup>

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167. *Id.*

168. *Id.*

169. *See* CHEMERINSKY, *supra* note 147, at 719.

170. *See* Plyler v. Doe, 457 U.S. 202, 218 (1982), *rehearing denied*, 458 U.S. 1131 (1982); Michael A. Helfand, *The Usual Suspect Classifications: Criminals, Aliens, and the Future of Same-Sex Marriage*, 12 U. PA. J. CONST. L. 1, 48-49, n.210 (2009).

Indeed, it is difficult to develop a principled theory on why sex is immutable while homelessness is not; both seem to be classes that are difficult, but not impossible, to exit. However, an individual's sex is undoubtedly assigned at birth, rendering it immutable for the purposes of the Equal Protection Clause.

*Id.*

171. *See id.*

172. CHEMERINSKY, *supra* note 147, at 719.

173. *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 367 (1971) (holding that aliens do not have the right to vote and therefore, the political process cannot be trusted to represent their interests).

174. CHEMERINSKY, *supra* note 147, at 719.

175. *See id.*

176. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

Further, many of the laws and ordinances that could burden homeless people are those that have a discriminatory impact, not necessarily a discriminatory purpose.<sup>177</sup> Ordinances that prohibit panhandling, camping, and public urination may have a more burdensome affect on the homeless than on others, but are probably not put into affect for the purpose of causing harm to homeless people.<sup>178</sup> The Supreme Court has held that there must be proof of a discriminatory purpose for laws that are facially neutral to be treated as classifications.<sup>179</sup> In *Washington v. Davis*, two African American police officers whose applications to become officers had been rejected, filed suit alleging that the department's recruiting procedures discriminated on the basis of race because the test that they were required to take had the affect of excluding a disproportionately high number of African American applicants.<sup>180</sup> The Court held that since the qualifications were racially neutral, they did not deprive the men of equal protection of the laws simply because a greater proportion of African Americans failed the test than whites.<sup>181</sup>

Because homelessness would not warrant the application of strict or intermediate scrutiny, rational basis is the test that would be applied in cases of laws discriminating against homeless people.<sup>182</sup> To reiterate, for rational basis scrutiny, the government only needs to show that the law is rationally related to a legitimate government purpose.<sup>183</sup> There is a strong presumption in favor of the laws that are challenged under rational basis.<sup>184</sup> At the very least, there is a legitimate purpose if a law protects safety, public health, or public morals.<sup>185</sup> Because of this, it is likely that most ordinances or laws that would affect homeless individuals would pass rational basis scrutiny.<sup>186</sup> Ordinances such as those that prohibit camping in public

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177. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976).

178. See, e.g., *id.*

179. See *id.*

180. *Id.* at 233.

181. *Id.* at 242.

182. CHEMERINSKY, *supra* note 147, at 723. Again, the Equal Protection Clause analysis only applies to discriminatory practices of the state, federal, or local governments. It would apply if a law or ordinance discriminated against homeless people or if a homeless person was discriminated against when applying for a job with a government or public actor. It does not apply to private companies that could discriminate against homeless people when applying for jobs, that analysis will be discussed later on in this Article. See *infra* Part IV.B.

183. *Id.*

184. See *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961) ("State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.").

185. CHEMERINSKY, *supra* note 147, at 725.

186. See *id.*

places can be seen to promote public health and safety, and there could be a rational tie between the ordinance and the government purpose.<sup>187</sup>

#### IV. A CLOSE LOOK AT SOME OF THE PROVISIONS IN THE ILLINOIS HOMELESS BILL OF RIGHTS

Though up to this point all three of the Homeless Bill of Rights Acts have been considered, the rest of this Article will particularly discuss the Illinois legislation and impacts on the homeless population in Illinois.

##### A. RIGHT TO USE AND MOVE FREELY IN PUBLIC SPACES IN THE SAME MANNER AS ANY OTHER PERSON

The first right set forth in the Homeless Bill of Rights is the right to use and move freely in public spaces.<sup>188</sup> Phrased in this way, the Bill of Rights seems to allow homeless people free reign of parks, sidewalks, transportation systems, and other public spaces.<sup>189</sup> However, the right is qualified by the statement, “in the same manner as any other person.”<sup>190</sup> In essence the law says that a homeless person can use public places just as any person who is not homeless would use them, which does not give them any new right at all.<sup>191</sup> Perusing the hours of some of the parks in the Chicago area, it seems that the parks are open from six o’clock in the morning to eleven o’clock in the evening.<sup>192</sup> Municipalities can set the hours of their parks pursuant to home rule.<sup>193</sup> This gives people, homeless and not, the right to use the park only during waking hours, which significantly impacts homeless people in a negative manner, as many would use the parks for sleeping.<sup>194</sup>

Under home rule a state legislative provision allocates some autonomy to local governments, conditional on the state’s acceptance of some terms, so that the local government can make some of its own rules.<sup>195</sup> “Home rule in the United States was sometimes envisioned in its early days as giving the cities to whom such rule was granted full-fledged sovereignty over local

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187. See *Joel v. City of Orlando*, 232 F.3d 1353, 1358 (11th Cir. 2000).

188. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

189. *See id.*

190. *Id.*

191. *See id.*

192. CHICAGO PARK DISTRICT, *Park Search*, <http://www.chicagoparkdistrict.com/parks/search/?f=24> (last visited Jan. 3, 2014).

193. *See infra* Part IV.B(1).

194. *See id.*

195. BLACK’S LAW DICTIONARY 802 (9th ed. 2009).

affairs, thus bringing about dual state and local sovereignty along the national plan of federal and state governments.”<sup>196</sup>

Illinois grants automatic home rule status to local governments who exceed twenty-five thousand people.<sup>197</sup> Then it provides referendum criteria for those units of local government with smaller populations wishing to become home rule units, as well as criteria for those that do not.<sup>198</sup> No charters are required for home rule units in Illinois.<sup>199</sup>

As stated previously, by using the statement “in the same manner as any other person” the Homeless Bill of Rights provision allowing homeless people to use public property in essence does not grant any exceptional right.<sup>200</sup> Further, it does not take away the power of local governments to put restrictions on the use of public facilities under home rule.<sup>201</sup> Courts in Illinois have held that ordinances adopted by home rule local governments prevail over conflicting state statutes adopted prior to the effective date of the home rule sections of the constitution.<sup>202</sup> The Illinois legislature must specifically indicate its intent in any statute in which it means to exercise exclusive power over a particular home rule matter.<sup>203</sup> In the Homeless Bill of Rights provision, there is no legislative intent to restrict local governments from putting restrictions on the use of public property.<sup>204</sup> Because the provision allows homeless people to use the property only in the same manner as other people, and because it does not preempt local government ability to put restrictions on the use of public property, the provision is ineffectual.<sup>205</sup>

## B. RIGHT NOT TO FACE BARRIERS WHILE MAINTAINING EMPLOYMENT

As discussed previously, the Illinois law protects the homeless from facing discrimination while maintaining employment, but not while trying

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196. Osborne M. Reynolds Jr., *Handbook of Local Government Law* § 35, at 96 (1982).

197. ILL. CONST. 1970, art. VII, § 6.

198. *Id.*

199. *Id.*

200. *See supra* Part II.B.

201. ILL. CONST. 1970, art. VII, § 6.

202. *See, e.g.,* Stryker v. Vill. of Oak Park, 62 Ill. 2d 523 (1976); Messina v. City of Chicago, 145 Ill. App. 3d 549 (1st Dist. 1986).

203. *Messina*, 145 Ill. App. 3d at 553. This section provided a very brief overview of Illinois’s home rule constitutional provision. Many states structure home rule differently or do not have home rule; however the intricacies of other states’ home rule is beyond the scope of this Article.

204. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

205. *See id.*

to find employment.<sup>206</sup> This provision does not address the real problem, as homeless people are going to have a harder time finding employment. However, even the provision as written does not have any meat as it does not create a protected class, and therefore, the homeless are not subject to the employment discrimination test set out in the Illinois Human Rights Act.<sup>207</sup>

Further, even if homelessness was a protected class and the Illinois law protected the homeless from facing discrimination in finding employment, like the Rhode Island statute, homeless people would still have a hard burden to prove that they were discriminated against because of their housing status.<sup>208</sup>

### 1. *Employment Discrimination Test*

The Illinois Human Rights Act governs employment discrimination based on protected classes.<sup>209</sup> Under this Act, a complainant trying to pursue a civil rights proceeding based on employment discrimination has the initial burden of proving, by a preponderance of the evidence, a prima facie case of unlawful discrimination.<sup>210</sup> In order to establish such a case, the complainant must show (1) that he or she was a member of a group protected by law, (2) that he or she was treated in a certain manner by the employer, and (3) that he or she was treated differently from similarly situated employees who were not members of the protected class.<sup>211</sup> Once the complainant establishes the prime facie case, there is a rebuttable presumption that the employer unlawfully discriminated against him or her.<sup>212</sup> The employer may rebut this presumption by expressing, not proving, a genuine, nondiscriminatory reason for the adverse employment action.<sup>213</sup> If the employer meets its burden of production, the presumption of discrimination falls away, and the complainant must prove that the employer's reason was not its true reason, but rather just a pretext for discrimination by showing

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206. *See id.*

207. *See* 775 ILL. COMP. STAT. ANN. 5/2-102. (West 2015).

208. *See id.*; R.I. GEN. LAWS. §§ 34-37.1 (2012).

209. 775 ILL. COMP. STAT. 5/2-102 (West 2015).

210. *See* Loyola Univ. of Chi. v. Ill. Human Rights Comm'n, 149 Ill. App. 3d 8 (1st Dist. 1986).

211. *See In re Toledo*, 312 Ill. App. 3d 131 (1st Dist. 1986).

212. *See id.*

213. *See* Owens v. Dept. of Human Rights, 356 Ill. App. 3d 46 (1st Dist. 2005); Irick v. Ill. Human Rights Comm'n, 311 Ill. App. 3d 929 (4th Dist. 2000); Ill. Dept. of Corrections v. Ill. Human Rights Comm'n, 298 Ill. App. 3d 536 (3d Dist. 1998); Roedl v. Midco Int., 296 Ill. App. 3d 213 (5th Dist. 1998).

that a discriminatory purpose more than likely motivated the employer.<sup>214</sup> Such pretext can be established by evidence that (1) there was an insufficient investigation into the given reason for the action, (2) the employee did not receive a hearing regarding the action, and (3) that the employee did not receive an opportunity to present his or her version of the story.<sup>215</sup>

## 2. *Homeless Discrimination Scenarios*

The next two paragraphs will apply the employment discrimination test set out in the previous section to two scenarios. In both scenarios Illinois has made homelessness a protected class.<sup>216</sup> In the first scenario William is a homeless man who is thirty-years old, and he has been working for a business called A Shipping Company on the loading docks for five years. His manager, Boss, at A Shipping has recently informed him that there are going to be some cuts on the loading docks, and he is going to be let go. He is the only person on his shift that is fired, and he was the only homeless man on his shift. William thinks that he is being discriminated against because of his housing status. William clearly meets the test for the prima facie case.<sup>217</sup> He is a member of a protected class since Illinois has made homelessness a protected class. He was fired by his employer, and there were other people on his shift that were not members of the class and were not fired. He has proven a rebuttable presumption of discrimination.<sup>218</sup> However, Boss says that the company has decided that all employees must have the equivalent of an associate's degree in order to increase the caliber of the company. William only graduated high school. This is likely to be considered a valid, nondiscriminatory reason for termination.<sup>219</sup> Now, William is going to have to show that this reason is just a pretext for discrimination.<sup>220</sup> If there were other people on William's shift without an associ-

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214. See *Cisco Trucking Co., Inc. v. Human Rights Comm'n*, 274 Ill. App. 3d 72 (4th Dist. 1995); *Vidal v. Ill. Human Rights Comm'n*, 223 Ill. App. 3d 467 (5th Dist. 1991).

215. See, e.g., *Irick*, 311 Ill. App. 3d 929; *Charles A. Stevens & Co. v. Human Rights Comm'n*, 196 Ill. App. 3d 748 (1st Dist. 1990) (holding that the reasons articulated by the employer for discharging an employee were pretextual because the employer made no effort to comply with any of its termination-policy requirements of written warnings and meeting prior to terminating the manager).

216. See *supra* Part II.B.

217. See, e.g., *Toledo*, 312 Ill. App. 3d 131.

218. See *id.*

219. See, e.g., *Cisco Trucking Co., Inc.*, 274 Ill. App. 3d 72; *Vidal*, 223 Ill. App. 3d 467.

220. See, e.g., *Irick*, 311 Ill. App. 3d 929; *Charles A. Stevens & Co.*, 196 Ill. App. 3d 748 (holding that the reasons articulated by the employer for discharging an employee were pretextual because the employer made no effort to comply with any of its termination-policy requirements of written warnings and meeting prior to terminating the manager).

ate's degree that did not get fired, if William was in the process of completing his associate's degree, or if the processes for termination were not followed correctly, maybe William could win his case.<sup>221</sup> However, if William was the only person without an associate's degree and all the processes were followed correctly, he is likely to lose the case.<sup>222</sup>

In the next scenario, Illinois still has homelessness as a protected class and has changed its Homeless Bill of Rights provision to include finding employment.<sup>223</sup> Marilyn is a forty-year-old homeless woman who is looking for a job. She received a bachelor's degree in accounting from The University fifteen years ago. Her family hit a rough patch when she lost her job three years ago, and she is trying to get back on her feet. She was one of ten to receive an interview at a business called New Accounting Firm that had just opened and was looking to hire ten accountants. After the interview the firm's founder, President, told Marilyn what a great member of the team she would make. Marilyn was really excited and felt like she had gotten the job. A few days after the interview, Marilyn received a message at the shelter that she was staying at, from President. When she called President back, she was informed that she did not receive the job. Nine accountants were hired. Marilyn believes that she did not receive the job because President found out that she was living at a shelter. Like William, Marilyn could establish the prima facie case fairly easily.<sup>224</sup> She is a member of a protected class, she was not hired by the employer, and others that interviewed were hired.<sup>225</sup> But, President says that Marilyn's resume and interview were not as good as the other candidates. President also said that they decided to only hire nine accountants to start and Marilyn was the least qualified. In Marilyn's case it is going to be harder to prove that these reasons are just a pretext for discrimination than in William's.<sup>226</sup> If Marilyn could prove that President was going to hire her before he called and realized that she lived in a shelter, she could prove it is just a pretext.<sup>227</sup> However, many hiring decisions are subjective. If President did not record the interviews, there is no way to show that everyone else did not interview better than Marilyn. President might be able to come up with some qualities that the other candidates had that he did not think Marilyn had. Further, the fact that the

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221. See, e.g., *Irick*, 311 Ill. App. 3d 929; *Charles A. Stevens & Co.*, 196 Ill. App. 3d 748.

222. See, e.g., *Irick*, 311 Ill. App. 3d 929; *Charles A. Stevens & Co.*, 196 Ill. App. 3d 748.

223. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013); see *supra* Part IV.B.

224. See, e.g., *In re Toledo*, 312 Ill. App. 3d 131 (1st Dist. 1986).

225. See *supra* Part IV.B-1.

226. See *id.*

227. See, e.g., *Irick*, 311 Ill. App. 3d 929; *Charles A. Stevens & Co.*, 196 Ill. App. 3d 748.

company was just starting could be a reason to scale back on the amount of accountants that were hired at the beginning.

### 3. *Barriers to Relief*

As the previous two scenarios show, even if homelessness is considered a protected class, homeless people still have many barriers to cross to even win their case.<sup>228</sup> Employers may be able to come up with good reasons to back their employment decisions, and might be able to hide the true, underlying discrimination.<sup>229</sup> Just because it holds up in court does not mean that it is actually true. In this day and age, a lack of education is going to be a big reason for employers not to hire, which is definitely going to have a negative impact on the homeless.<sup>230</sup>

Another barrier is getting an attorney to take the case. Those that are homeless do not have the money to pay for an attorney. Though there are free clinics and attorneys that do pro bono work, those that are homeless are likely not to have access to the information of who to turn to. Even if they do they might not have the transportation to get there.

## C. RIGHT TO VOTE

The Homeless Bill of Rights gives the homeless the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status.<sup>231</sup> However, in many cases this is easier said than done.<sup>232</sup> Though state and federal laws have eliminated some of the barriers that homeless people have while voting, such as requiring registrants to live in a “traditional dwelling,” other obstacles still remain.<sup>233</sup> The two biggest issues are residency and mailing address requirements and identification.<sup>234</sup>

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228. *See supra* Part IV.B(2).

229. *See id.*

230. NATIONAL COALITION FOR THE HOMELESS, *Homeless Employment Report: Findings and Recommendations* (Aug. 2009), <http://www.nationalhomeless.org/publications/homelessemploymentreport/>.

231. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

232. NAT’L COAL. FOR THE HOMELESS, *Voting Rights: Registration Manual, You Don’t Need a Home to Vote*, at 42 (Aug. 2012), available at [http://www.nationalhomeless.org/projects/vote/Manual\\_2012.pdf](http://www.nationalhomeless.org/projects/vote/Manual_2012.pdf) [hereinafter *Voting Rights*].

233. *Id.*

234. *Id.*

### 1. *Residency and Mailing Address Requirements*

“When registering to vote, homeless voters only need to designate their place of residence, which can be a street corner, a park, a shelter, or any other location where an individual stays at night.”<sup>235</sup> This is to make sure that the voter lives within the district in which he or she is trying to register.<sup>236</sup> Most states also require a mailing address so that voter identification cards and other election materials can be sent to registered voters.<sup>237</sup> The address can again be a variety of addresses including that of a “local advocacy organization, shelter, outreach center, or anywhere else willing to accept mail on behalf of a person registering to vote.”<sup>238</sup>

Though states have made the requirements to vote more accessible, it still provides many difficulties for the homeless.<sup>239</sup> For one thing, providing a mailing address from a shelter or other organization does not guarantee that the person will get the voter information that comes in the mail.<sup>240</sup> A homeless voter may only make their way to the organization every so often or may not frequent it at all.<sup>241</sup> Further, many homeless voters may not be knowledgeable about these requirements.<sup>242</sup> They may not know that they can put down another address, or they may not have the resources to find addresses that they could put down. Homeless people may not be able to register in time or get their voter registration card from the place that it was mailed in time for election; in Illinois registration must be done twenty-eight days before the election if done by mail or seven days before the election if done in person.<sup>243</sup>

“Although the requirement to live in a traditional dwelling has been eliminated, many states still maintain durational residency requirements for voter registration.”<sup>244</sup> In Illinois, for example, a person must reside in the election district for thirty days before the election.<sup>245</sup> “This makes voter registration for homeless people very difficult as they are often subject to circumstances that require them to frequently re-locate against their wishes.”<sup>246</sup>

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235. *Id.*

236. *Id.*

237. *Voting Rights, supra* note 232.

238. *Id.*

239. *See id.*

240. *See id.*

241. *See id.*

242. *See Voting Rights, supra* note 232.

243. *Id.* at 48.

244. *Id.* at 42.

245. *Id.* at 48.

246. *Id.* at 42; *see also, supra* Part I.A.

## 2. *Identification Issues*

Pursuant to the Help America Vote Act (HAVA), “first-time registrants in all states who register by mail must provide a driver’s license number or the last four digits of their Social Security number on their voter registration form.”<sup>247</sup> If the registrant does not have either, he or she will be assigned a voter identification number once his or her registration is approved.<sup>248</sup> “In addition, first-time mail-in registrants must provide an identification document at the polls, unless a registrant submits either his or her driver’s license or the last four digits of his or her Social Security number when registering and the accuracy of the information has been verified . . . .”<sup>249</sup> Acceptable forms of identification include: photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government documents that show the voter’s name and address.<sup>250</sup> Homeless voters that do not have any of the forms of identification would have a better time registering in person at their local registration office.<sup>251</sup> This also provides potential problems as the homeless person will have to find a way to get to the voter registration office.<sup>252</sup>

Thirty-three states have stricter requirements than HAVA, though Illinois is not one of them.<sup>253</sup> Nine states require all voters to present a form of photo identification at the polls.<sup>254</sup> Eight states request and highly recommend that voters bring a photo ID to the polls, but they have alternatives, such as affidavits swearing to the voter’s identity or allowing the voter to recite their date of birth and address.<sup>255</sup> Three states absolutely require all voters to present a form of identification at the polls, but do not require the ID to have a photo.<sup>256</sup> Thirteen states request and highly recommend voters bring an ID, either with a photo or without, to the polls, but they have more alternatives than strict non-photo ID states, such as the affidavits or swearing talked about previously.<sup>257</sup>

Illinois requires a driver’s license number, state ID number, Social Security number, or the last four digits of a Social Security number when registering to vote by mail.<sup>258</sup> If the applicant does not have any of these num-

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247. *Voting Rights, supra* note 232.

248. *Id.*

249. *Id.* at 42-43.

250. *Id.*

251. *Id.*

252. *Voting Rights, supra* note 232, at 43.

253. *Id.* at 53.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Voting Rights, supra* note 232, at 53.

258. *Id.* at 60.

bers then a photocopy of an ID has to be submitted, either with a photo or a non-photo document.<sup>259</sup> If any of these forms of identification is given at the time of registering to vote, then no ID is required at the time of voting.<sup>260</sup> For an in-person registrant, two forms of ID must be presented at registration; one of which typically must show a residential address, but for homeless individuals must only show a mailing address.<sup>261</sup> Voter registration in Illinois is less strict than that in other states and thus provides a greater opportunity for homeless persons to vote, with or without the provision added into the Homeless Bill of Rights.<sup>262</sup>

#### D. OTHER RIGHTS

The Homeless Bill of Rights includes other provisions as well, such as the right to equal treatment by state and municipal agencies, the right to emergency medical care, the right to confidentiality of personal records and information, and the right to a reasonable expectation of privacy in personal property.<sup>263</sup> The extent of these rights is beyond the purview of this Article. Nevertheless, it seems that these rights would be the same for *all* people, homeless or not.<sup>264</sup> Further, as the Illinois law does not include homelessness as a protected status, nor does it include the ability to enforce this law through the Illinois Human Rights Act, it is unclear how these rights will actually get enforced.<sup>265</sup>

#### V. ALTERNATIVE POLICY SUGGESTIONS

As this Article makes clear, the Illinois Homeless Bill of Rights does not do anything to solve the problem of homelessness.<sup>266</sup> It may purport to make homelessness a little bit more comfortable, but does not address the underlying problem.<sup>267</sup> There are other solutions that should be considered, which will be considered in detail in the following sections.

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259. *Id.*

260. *Id.*

261. *Id.*

262. *See Voting Rights, supra* note 232, at 42.

263. 775 ILL. COMP. STAT. ANN. 45/1 – 45/99. (West 2013).

264. *See id.*

265. *Id.*

266. *See id.*; *supra* Part IV.

267. *See supra* Part IV.

## A. HOUSING

The Illinois Homeless Bill of Rights does not address the problem of housing for the homeless.<sup>268</sup> It is rather self-evident that in order for people not to be homeless they must find a home to live in. There are many directions that the state can take to address housing for the homeless, including: adding housing status as a protected class for the purposes of the sale and rental of property,<sup>269</sup> creating and preserving affordable housing,<sup>270</sup> and having a “Housing First” approach.<sup>271</sup>

### 1. *Housing Status as a Protected Class*

As looked at previously,<sup>272</sup> the Rhode Island Homeless Bill of Rights contains a provision that includes housing status as a protected class under the Rhode Island Fair Housing Practices Act.<sup>273</sup> It provides that people cannot be denied equal opportunity in obtaining housing accommodations because of discriminatory practices based on housing status.<sup>274</sup> This provision could prevent landlords from refusing to rent to people that do not have a past landlord to use as a reference, which would be a big benefit to many homeless trying to get back on their feet.<sup>275</sup> Chicago, Illinois, has such a provision in its Human Rights Ordinance.<sup>276</sup>

Though including housing status as a protected class for obtaining housing accommodations would have a benefit for those homeless looking to find homes, it is not enough.<sup>277</sup> For one thing, it would only affect those homeless that have the money necessary to rent an apartment or house, and would not help those that do not. Also, much like including homelessness as a protected class for employment purposes, there would still be the long legal process in which the homeless person would actually have to prove that they were being discriminated against because of their housing sta-

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268. *See id.*

269. *See* ILL. CONST. 1970, art. 1, § 17.

270. *See* COAL. FOR THE HOMELESS, *Proven Solutions*, <http://www.coalitionforthehomeless.org/ending-homelessness/proven-solutions/> (last visited Mar. 1, 2015) [hereinafter *Proven Solutions*].

271. *See* NAT’L ALLIANCE TO END HOMELESSNESS, *Housing First*, [http://www.endhomelessness.org/pages/housing\\_first](http://www.endhomelessness.org/pages/housing_first) (last visited Jan. 3, 2014) [hereinafter *Housing First*].

272. *See supra* Part I.B.

273. R.I. GEN. LAWS. §§ 34-37.1 (2012).

274. *Id.*

275. *See id.*

276. *See* COOK COUNTY HUMAN RIGHTS ORDINANCE 93-0-13 (1993).

277. *See* Richard R. Troxell, *Homeless Protected Class Resolution*, HOUSE THE HOMELESS, <http://www.housethehomeless.org/your-support-appreciated/homeless-protected-class-resolution/> (last visited Jan. 11, 2014).

tus.<sup>278</sup> Not only would it require many legal costs, but there would also be no guarantee that the person would win the case and while fighting he or she is likely to have to continue to go without a home.<sup>279</sup>

## 2. *Creating and Preserving Affordable Housing*

The fundamental cause of homelessness is the widening housing affordability gap.<sup>280</sup> At the same time that housing affordability has worsened, governments at every level have cut back on already inadequate housing assistance for low-income people and have reduced investments in building and preserving affordable housing.<sup>281</sup> To address the housing affordability gap the Illinois and city governments must significantly increase investments in affordable rental housing, with a significant portion targeted to homeless families and individuals.<sup>282</sup> Illinois must also strengthen rent regulation laws to preserve affordable housing and protect tenants.<sup>283</sup>

The Chicago Housing Authority (CHA) provides many housing options for low-income families and senior citizens.<sup>284</sup> The CHA's Housing Choice Voucher Program helps low-income households pay for quality housing in the private market.<sup>285</sup> With funding from the U.S. Department of Housing and Urban Development, the Program pays a portion of a family's rent each month based on their adjusted income.<sup>286</sup> However, there is an extensive wait list and lottery system so even though they do good work in providing housing for those who cannot afford it, the housing can only go so far; currently the CHA is not adding any additional names to most of their waitlists.<sup>287</sup> Homeless people in Chicago and other Illinois cities and towns could greatly benefit from an increase in affordable housing.<sup>288</sup>

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278. *See supra* Part IV.B.

279. *See id.*

280. *Proven Solutions*, *supra* note 270.

281. *Id.*

282. *See id.*

283. *See id.*

284. CHI. HOUS. AUTH., *Housing*, <http://www.thecha.org/residents/public-housing/find-public-housing/> (last visited Mar. 1, 2015).

285. CHI. HOUS. AUTH., *About the Housing Choice Voucher Program*, <http://www.thecha.org/residents/housing-choice-voucher-hcv-program/> (last visited Mar. 1, 2015).

286. *Id.*

287. *See id.*

288. *See Proven Solutions*, *supra* note 270.

### 3. “Housing First” Programs

Housing First is an approach to ending homelessness that centers on providing people experiencing homelessness with housing as quickly as possible, and then providing services as needed.<sup>289</sup> These programs emphasize stable, permanent housing as a primary strategy for ending homelessness.<sup>290</sup> All Housing First programs center on three elements: (1) a focus on helping individuals and families access and sustain permanent rental housing as quickly as possible without time limits; (2) a variety of services delivered to promote housing stability and individual well-being on an as-needed basis; and (3) a standard lease agreement for housing, as opposed to mandated therapy or services compliance.<sup>291</sup>

Nashville, Tennessee, is one city using a Housing First approach.<sup>292</sup> Through the program, approximately two hundred people were taken off the streets and housed in apartments and duplexes between June and October 2013.<sup>293</sup> Under Nashville’s program, tenants are charged a minimum of fifty dollars a month and a maximum of thirty percent of their income, usually coming from Social Security payments.<sup>294</sup> Many of the homeless that now have a place to live would not have been able to rent under a typical lease even if they had money because they have bad or no credit and many have been to prison.<sup>295</sup> Homeless advocates anticipate that, with the help of social workers, three-quarters of the tenants will be able to keep a roof over their heads, though some will get evicted.<sup>296</sup>

The Housing First model is based on a solid premise that Chicago and other cities and towns in Illinois should consider: homeless people should not have to earn a place to stay by conquering an addiction or other problem; housing should be the first step to getting their lives stabilized.<sup>297</sup> Starting Housing First programs in conjunction with affordable housing initiatives would help to get a lot of Illinois’s homeless off the streets and into a place where they can start rebuilding their lives.<sup>298</sup>

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289. *Housing First*, *supra* note 271.

290. *Id.*

291. *Id.*

292. Blake Farmer, *A Housing-First Solution to Chronic Homelessness in Nashville*, MARKETPLACE ECONOMY, Oct. 7, 2013, available at <http://www.marketplace.org/topics/economy/housing-first-solution-chronic-homelessness-nashville>.

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. Farmer, *supra* note 292.

298. *See Proven Solutions*, *supra* note 270; *Housing First*, *supra* note 271.

## B. ALTERNATIVES TO CRIMINALIZATION

Many are probably not sold on the idea of using taxpayer money to subsidize housing for homeless people when the economy is not doing very well as it is. However, there are better solutions than making it a crime to sleep in a park or arresting the homeless and dropping them off at the edge of town.<sup>299</sup> While many cities have laws that target homeless people living in public spaces, some cities have programs and initiatives that work to serve the needs of homeless people in a more positive manner.<sup>300</sup> Solutions include: street outreach programs,<sup>301</sup> organized encampments,<sup>302</sup> identification programs,<sup>303</sup> and alternative justice systems.<sup>304</sup>

### 1. *Street Outreach Programs*

Many local governments devote resources to moving homeless people out of public areas, but this does not really fix the problem.<sup>305</sup> This sort of remedy is only temporary and is also a primary reason that the homeless population distrusts law enforcement and the community in general.<sup>306</sup> Forcing people to move, though not a solution, is often the only tool police officers have to fix the problem of homelessness in the area.<sup>307</sup> Cities need to create “[c]ollaboration between law enforcement and behavioral health and social service providers” so that there can be “tailored interventions that connect people with housing, services, and treatment,” while at the same time meeting “the community’s goal of reducing the number of people inhabiting public spaces.”<sup>308</sup>

One city that has such a program is Minneapolis, Minnesota.<sup>309</sup> Their Street Outreach Program works with the Minneapolis Police Department and the City Attorney’s Office to address the needs of homeless individu-

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299. *See supra* Part I.

300. THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 46 (Nov. 2011), *available at* [http://www.nlchp.org/Criminalizing\\_Crisis](http://www.nlchp.org/Criminalizing_Crisis) [hereinafter THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY].

301. *See id.* at 49.

302. *See id.* at 48.

303. *See id.* at 50.

304. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 4 (2012), *available at* [http://usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) [hereinafter U.S. INTERAGENCY COUNCIL ON HOMELESSNESS].

305. *Id.*

306. *Id.*

307. *Id.*

308. *See id.*

309. *See* THE NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 300, at 49.

als.<sup>310</sup> Staff of the Street Outreach Program have access to the police department's radio and can address any 911 calls that require a human services response instead of a criminal justice response.<sup>311</sup> Because of the program, there was a fourteen percent reduction in the arrests of homeless individuals between 2007 and 2009, over 1,400 calls on homelessness were diverted from police time to more appropriate services, and about 350 people who were living on the street were provided with housing.<sup>312</sup>

## 2. *Organized Encampments*

Most cities in the country do not have adequate shelter space or affordable housing to meet the need, thereby forcing many homeless individuals to live in public spaces.<sup>313</sup> This frequently leads to many homeless persons being harassed for doing things they need to do to survive.<sup>314</sup> The City of Puyallup, Washington, has created a temporary solution to such a problem.<sup>315</sup> In 2010 the City passed an ordinance that allows organizations to set up temporary encampments for homeless individuals.<sup>316</sup> The encampments are to have an occupancy rate of forty persons, are equipped with facilities for personal hygiene and trash collection, and residents agree to abide by a code that prohibits drugs, alcohol, and weapons.<sup>317</sup>

While such encampments are clearly not a long-term solution, they provide a place for homeless people to stay without fear of being kicked out and provide a living space until a better solution comes along.<sup>318</sup>

## 3. *Identification Programs*

As discussed briefly in the section on voting, lack of identification is a problem for many homeless individuals.<sup>319</sup> Homeless people are at a disadvantage when trying to apply for identification due to the lack of a stable address.<sup>320</sup> Without adequate photo identification, many homeless individuals are denied access to crucial public benefits, such as Supplemental Secu-

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310. *Id.*

311. *Id.*

312. *Id.*

313. THE NAT'L COAL. FOR THE HOMELESS AND THE NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 24, at 36.

314. *Id.*

315. *See* THE NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 300, at 48.

316. *Id.*

317. *Id.*

318. *See id.*

319. *See supra* Part IV.

320. *Id.*

rity Income and the Supplemental Nutrition Assistance Program that could help them transition out of homelessness.<sup>321</sup>

Orlando, Florida, has created a model for helping homeless people get identification, which could be replicated in Illinois.<sup>322</sup> Once a month the Department of Motor Vehicles, the Social Security Administration, the Health Department, and the Department of Veteran's Affairs coordinate with local service providers to run an event called IDignity where poor and homeless individuals can come to apply for government identification, such as driver's licenses, Social Security cards, or birth certificates.<sup>323</sup> Some documents can be printed on-site, and IDignity hosts a weekly document distribution service where individuals can collect IDs.<sup>324</sup> IDignity covers the costs of applying, and 6,500 people have been served over the past two years.<sup>325</sup>

#### 4. *Alternative Justice Systems*

Many homeless individuals are not able to find jobs or a place to live because of the myriad of legal issues that they deal with.<sup>326</sup> "Additionally, mental illness, substance abuse disorders, and logistical difficulties, such as lack of transportation and inability to store or retrieve personal records, as well as the daily search to meet basic needs, present substantial barriers to complying with court orders and paying applicable fines."<sup>327</sup> Individuals that become homeless upon release from jail or prison are more likely to commit another crime.<sup>328</sup> Further, as homeless people receive assistance through different public services without actually getting the help that they need, the cost to the state and government entities escalates.<sup>329</sup>

There are many solutions to these problems that do not require putting the homeless back into prisons and jails and continuing a cycle that they cannot get out of.<sup>330</sup> Such solutions include:

- 1.) Problem-solving courts, including homeless courts, mental health courts, drug courts and Veterans courts, that focus on the underlying causes of

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321. See THE NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 300, at 50.

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.* at 50-51.

326. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 304, at 4.

327. *Id.*

328. See CORP. FOR SUPPORTIVE HOUSING, GETTING OUT WITH NOWHERE TO GO 3 (2009), available at <http://homeless.samhsa.gov/ResourceFiles/i4q3drbu.pdf>.

329. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 304, at 4.

330. *See id.*

illegal activities with the intention of reducing recidivism and encouraging reintegration into society;

2.) Citation dismissal programs that allow individuals who are homeless with low-level infractions to participate in service or diversion programs or link them with appropriate services in lieu of paying a fine;

3.) Create holistic public defender offices, enabling them to provide a range of social services in addition to standard legal services for populations with special needs;

4.) Volunteer legal projects and pro bono attorneys that provide essential legal services for homeless populations and for the agencies serving them;

5.) Reentry or transition planning to prepare people in prison or jail to return to the community by linking them to housing and needed services and treatment;

6.) Reentry housing, specialized housing with support services tailored to the needs of ex-offenders, designed to help them make a successful transition from incarceration back to the community;

7.) Reentry employment, transitional work and supportive employment services to individuals shortly after their release from jail or prison.<sup>331</sup>

These alternative justice solutions help resolve the legal needs of the homeless, while at the same time easing court backlogs and reducing vagrancy.<sup>332</sup> Though some of the solutions may be costly, they can also reduce the future costs of the homeless in the court and prison system.<sup>333</sup>

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331. *Id.* at 5.

332. *Id.* at 30.

333. *Id.*

## VI. CONCLUSION

Many of the alternative policy considerations offered in this Article may be easier said than done.<sup>334</sup> Many involve a lot more money than the government or taxpayers are willing to put towards such a cause. Some people probably think that Illinois, Rhode Island, and Connecticut should be commended for actually considering the homeless enough to create legislation.<sup>335</sup> However, the point of this Article is that it is going to take more than a quickly passed piece of legislation to solve the problem of homelessness.

As this Article shows, homeless people are at a major disadvantage.<sup>336</sup> Not only do they not have a home and are forced to live on the streets, but much of what is necessary to keep them alive has been criminalized by governments.<sup>337</sup> The homeless have been ostracized by communities.<sup>338</sup> Many of the protections that we as humans have been given are not as readily available to the homeless, which is what the legislators who created the Homeless Bill of Rights realized.<sup>339</sup>

It is going to take time, it is going to take money, and it is going to take resources, but the problem of homelessness can be solved. We cannot just see that the State has created legislation to help the homeless and then take it at face value that it is actually helping. As a society, we cannot sit idly by and praise the State for creating a piece of legislation assuming it is helpful. We need to look at it, analyze it, and criticize it, otherwise the legislation will never get better and homelessness will never be solved. No, it is not going to be easy. It is going to take a lot more money and resources than many are willing to spend. However, the reward is very great.

We cannot think of it only as how many zeros are going to come after that dollar sign, but as human lives. Not only are the lives of the homeless going to be bettered, but life for everyone. All the laws that criminalize the homeless by not allowing them to be in certain areas of the city or not allowing them to panhandle, were put in place because many say they do not like the aesthetic of homeless people on the street or do not want to be

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334. See *supra* Part V.

335. See, e.g., David Klepper, *Rhode Island Homeless Bill of Rights Praised as U.S. Model*, HUFFINGTON POST (June 27, 2012), [http://www.huffingtonpost.com/2012/06/27/rhode-island-homeless-bill-of-rights\\_n\\_1632411.html](http://www.huffingtonpost.com/2012/06/27/rhode-island-homeless-bill-of-rights_n_1632411.html); Ellyn Fortino, *Illinois Enacts Landmark Homeless Bill of Rights*, PROGRESS ILL. (Aug. 27, 2013), <http://www.progressillinois.com/quick-hits/content/2013/08/27/illinois-enacts-landmark-homeless-bill-rights>.

336. See *supra* Parts II, IV.

337. See *supra* Part II.

338. See *id.*

339. See *id.*

bothered by people asking for money.<sup>340</sup> The purest, best, and most long lasting way to fix this is to fix homelessness. Let us not put a bandage over the side effects, but cure the disease.

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340. *See id.*